IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1127 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO. LTD.

Versus

JAYABEN GIRISHBHAI RATHOD

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Appearance:

MR PV NANAVATI & MR VIBHUTI NANAVATI for Appellant

MR NALIN K THAKKER for Respondent No. 1-5

NOTICE SERVED for Respondent No. 6

MR KC SHAH, AGP,for Respondent No. 8

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CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Appeal admitted. Mr. N.K. Thakker waives service for respondent nos.1 to 5-original claimants.

2. On a joint request of the learned counsel for the respective parties, this appeal is taken up for final hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company, challenging the judgement and award of the Motor Accident Claims Tribunal, Bhuj, given under section 163-A of the Motor Vehicles Act (as amended in 1994). The appellant insurer contends that the impugned award under section 163-A has been delivered by the Tribunal as an interim award by passing the same as an order at Exh.6 in the main claim petition which has been filed under section 166 of the Motor Vehicles Act, which is yet pending. The main Claim Petition is numbered as MACP No.991/98, whereas the impugned judgement and award under section 163-A (at Exh.6) is numbered as I.R. No.761/98.

4. The contention raised in this regard that an award under section 163-A cannot be regarded to be an interim award nor can it be regarded to be subject to adjustment against an award that may be passed in a petition filed under section 166 of the Act.

5. This is a contention which we are bound to accept in view of the decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai Kodala reported in 2001(4) JT page 477.

6. In the premises aforesaid, in view of the clear position of the law laid down by the Supreme Court, the impugned judgement and award is required to be quashed and set aside. We hold and direct accordingly. This appeal is, therefore, allowed with no order as to costs.

7. It is clarified that the respondents-claimants are at liberty to pursue the main claim petition filed under section 166 of the Act and to obtain a judgement thereon on merits and in accordance with law under section 168 of the Act.

8. The amount deposited in the Registry by the appellant herein may be withdrawn by the appellant, if not yet transmitted to the Tribunal.

9. The record and proceedings shall be sent back to the Tribunal by the Registry forthwith i.e. not later

than 5th July 2001.

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